IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 842 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS
and
Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHATURBHAI JAGABHAI VASAVA

Versus

STATE OF GUJARAT

Appearance:

MR I.M.KAPOOR FOR MR. PN BAVISHI for Petitioners

MR BY MANKAD, APP for Respondent No. 1

CORAM : MR.JUSTICE K.R.VYAS
and
MR.JUSTICE C.K.BUCH

Date of decision: 25/07/2000

ORAL JUDGEMENT (PER: C.K.BUCH, J)

1. The appellants- original accused have preferred

this appeal against the judgment dated 4.8.1990 passed by the learned Addl. Sessions Judge, Bharuch in Sessions Case No.8/90 whereby the appellants accused nos. 1 to 4 came to be convicted and sentenced for the offence punishable under sec.302 R/w sec.114 of IPC. Vide the said judgment, appellants accused came to be acquitted for the offences punishable under sec.504 of IPC and sec.135 of Bombay Police Act.

2. To appreciate the case put forward by the appellants before us in the memo of appeal, we would like to narrate, in nutshell, the case of the prosecution. According to the prosecution, on 11.10.1989 at about 8.00 P.M., at village Andhar-Kachala, when deceased Ishwarbhai Mansing and his wife Bhaniben were passing through Old Falia to bring flour and when they reached near the house of the accused persons, accused no.1 Chaturbhai Jarabhai Vasava told them as to why they came to Old Faliya area and accused persons picked up quarrel. It is the case of the prosecution that at that time, accused no.1 Chaturbhai was armed with an axe and accused nos. 2 to 4 were armed with sticks and accused assaulted deceased Ishwarbhai. Accused no.1 who had picked up quarrel, had given an axe blow on the head of the deceased and accused nos. 2 to 4 gave stick blows on the body of the deceased Ishwarbhai and abetted commission of offence. The deceased was abused by the accused persons and they have also violated prohibitory order passed by the District Magistrate, Bharuch by holding deadly weapons. After the incident, Bhaniben, wife of the deceased had rushed to the house of her daughter Savita and informed about the incident. That Bhaniben also told about the incident to one Narmadaben. Place of incident is situated at Old Falia of village Andhar-Kachala,Ta: Zagadia, District: Bharuch. Bhaniben, wife of the deceased Ishwarbhai, in couple of hours after the incident, rushed to Zagadia police station and informed the police about the incident. Police recorded complaint and prosecution relies on her complaint as FIR recorded under sec. 154 of CrPC. After investigation, police found that all the appellants accused are involved in the crime and, therefore, they were chargesheeted for the above-referred offences in the Court of learned Judicial Magistrate (F.C.), Zagadia. On committal, the accused are tried by the learned Addl. Sessions Judge, Bharuch. Charge (exh.1) framed against the accused persons is self-explanatory and the case of the prosecution, in nutshell is reflected in the said charge. After examining relevant witnesses and considering the documents produced and proved by the prosecution, trial Court offered an opportunity to the accused persons to

explain incriminating circumstances and evidence available on record against them by examining them under sec.313 of CrPC. Considering the nature of evidence available on record, learned trial Judge, vide impugned judgment, acquitted all the four accused of the offence punishable under sec.504 of IPC and sec.135 of Bombay Police Act and convicted all the four appellants-accused for the offence punishable under sec.302 R/w sec.114 of IPC and sentenced each of them to suffer R/I for Life. It is against this order of conviction and sentence, present appeal is filed.

3. Learned counsel Mr. I.M. Kapoor for Ld. Counsel Mr. P.N. Bavishi for the appellants-accused assailed the judgment and has contended that the same is based on erroneous appreciation of oral as well as documentary evidence. The learned Judge has erred in relying on the testimony of the sole eye-witness Bhaniben, wife of the deceased, in absence of sufficient corroborative evidence. Learned counsel has submitted that evidence of this witness is not trustworthy as her conduct is unnatural and her evidence is not corroborated. Learned counsel has further submitted that the FIR is filed at a belated stage which creates doubt and leads to prove that Bhaniben, wife of the deceased, was not an eye witness. Learned counsel, therefore, has submitted that in view of the evidence led and facts and circumstances of the case, this appeal requires to be allowed and appellants-accused require to be acquitted.

4. Before appreciating oral evidence led by the prosecution, we would like to mention that major part of the documentary evidence led by the prosecution, is admitted in evidence with the consent of the other side in view of the provisions of sec. 292 of CrPC. Endorsement made on the list of documents (exh.6) shows that (i) inquest panchanama, (ii) panchanama of scene of offence, (iii) panchanama of recovery of muddamal sticks from the accused persons, (iv) panchanama of recovery of clothes from the body of the deceased, (v) post mortem notes, (vi) report of FSL and (vii) serological report of FSL are admitted in evidence with the consent of the other side and the learned Judge has considered these documents while dealing with the case put forward by the prosecution. Prosecution has examined four important witnesses and also Investigating Officer.

5. P.W.1 Bhaniben (exh.17) has narrated the incident on oath before the trial Court. She has stated that at the time of incident, she along with her husband were proceeding towards shop of one Antol Jethia situated in Old Faliya. Deceased and prosecution witness Bhaniben

were residing in the area known as "Navi Nagari" of village Andhar-Kachala and when they were passing nearby the house of accused no.1 Chaturbhai Jagabhai, both of them were intercepted by the accused persons and were told that residents of "Navi Nagari" area should not pass through Old Faliya. According to her, all the four accused were there. She has stated that she knows each accused as all of them are resident of village Andhar-Kachala. She has further stated that during quarrel, accused no.1 Chaturbhai Jagabhai gave an axe blow on the head of the deceased. She has stated that on both the sides, axe blows were given. She has further stated that rest of the accused gave stick blows on the person of the deceased. Her husband had fallen down and as she got frightened, she ran away from the place of incident and rushed to the house of her daughter. She has also stated that she told about the incident to her daughter Savita and that Savita was informed that her father has been killed and, therefore, she should come with her. She has also stated that when she was going towards the house of Savita, her brother's wife (Bhabhi) named Narmada met her on the way and Narmada was also informed about the assault. She has identified muddamal axe during the course of her deposition and has also identified the accused persons present in the Court during the trial. Defence counsel appearing for the accused has cross-examined this witness at length and has tried to bring out the case that this witness was not present when the actual incident had occurred. After going through the deposition of this witness, we are satisfied that she is an illiterate and rustic villager and she is even not having precise knowledge about the date and time. She belongs to a class of persons who can bonafide commit error or mistake in assessing proximity of time. After going through oral evidence of this witness coupled with the fact that FIR was lodged by her before police within a couple of hours, we find that there is no material contradiction as to the occurrence of the incident. On the contrary, her oral version before the trial Court was consistent with the story narrated before the police at the earliest point of time. She has not exaggerated the version and obviously her evidence is without any material improvement. Learned counsel Mr. Kapoor has failed in bringing out any material infirmities in the evidence of this witness. Mr. Kapoor, learned counsel appearing for the appellants-accused has submitted that though Zagadia Police Station is very near, the complaint is lodged at a late stage and the delay is not explained. The alleged incident, though occurred during Navratri Days, no independent witness has been examined. Conduct of

complainant Bhaniben is unnatural and, therefore, evidence of P.W.1 Bhaniben ought not to have been accepted by the trial Court. Mr. Kapoor has also tried to point out certain infirmities from the evidence on record. He has submitted that time and place of meeting of complainant Bhaniben with Narmadaben is not consistent. Real daughter of the deceased Ishwarbhai namely Savitaben who was allegedly informed about the incident by P.W.1 Bhaniben, has not been examined by the prosecution. The averment made by Bhaniben during cross-examination that deceased was alive on Dusshera day, shows that she is a witness who is not sure about the time and place and recovery of muddamal weapon from the place of incident is also not legally proved by examining panchas and, therefore, the evidence of sole eye-witness Bhaniben ought not to have been accepted as a gospel truth. Mr. Kapoor has relied on the decision rendered in the case of Laxmanbhai Lakhabhai Baria & Ors. v/s State of Gujarat, reported in 1999(1) Crimes 591 and has submitted that the prosecution case based on the testimony of wife deceased who too is a solitary eye-witness, without corroboration, should not be accepted. According to Mr. Kapoor, case on hand falls in that category and, therefore, the appellants-accused should be acquitted and order of conviction imposed by the trial Court should be quashed and set aside.

6. We are inclined to state at this stage that Mr. Kapoor has not assailed the nature of medical evidence recorded by the trial Court and injuries sustained by the deceased. To appreciate the entire case of prosecution and version of P.W.1 Bhaniben, we would like to refer the extent of injuries found on the body of the deceased referred to in para-8 of the judgment delivered by the trial Court, which are as under:-

External Injuries :-

(1) I.W. Lt. Moyillary Region of the face, Size 1.5" x 0.5" x 0.5", Margin Reddish Scab.

(2) Abrasion on the (Lt) Upper chest 3rd I.C. space, size 1.5 cm. x O.5 cm. scab.

(3) Multiple abrasions (Rt) upper arms of shoulder, size 1.5 cm. x 1.00 cm. x scab.

(4) Multiple abrasions L Seats in 4/3 of (Lt) thigh 1 1/2" in size.

(5) Multiple abrasions with scabs on the 4/3 of left upper arm and shoulder 1.5 cm. x 1.00 cm. in size.

(6) CLW (Lt) temporal region of the scalp about 1" above the ear, size 2" x 1/2" x 1/2" with Diffuse swelling underneath the scalp.

Internal Injuries :-

(1) Diffuse Hematoma underneath the injury No.6 over the temporal bone (lt).

(2) Crushing fracture (Lt) temporal bone in to three pieces (depressed fracture).

(3) Diffuse subarachnoid Hemorrhage over the (Lt) temporal lobe of the brain Reddish in colour 4" x 4" in size, Pressing over the brain substance.

7. P.W.2 Dr. Jitendra Jinabhai (exh.19) who has been examined by the prosecution, has categorically stated that death of the deceased was caused due to head injury and other injuries especially on the chest which were sufficient in the ordinary course of nature to cause death. Doctor has also deposed that said injuries were ante-mortem. He has further deposed in his deposition that the injuries found on the body of the deceased can be inflicted by muddamal weapons. Muddamal Axe was found from the scene of offence and P.W.1 Bhaniben has identified muddamal axe during her deposition and there is no cross-examination on this point. This axe was recovered under the panchanama of the scene of offence drawn by the police on the next day morning and there is also evidence on record of Investigating Officer who has stated that he had reached the place of offence during night hours and necessary watch was arranged so that place of offence may not be tampered. Place of offence is not in dispute because panchanama is admitted in evidence with the consent of the other side. Inquest Panchanama and the injuries noticed by the doctor who had performed post-mortem, gets corroboration and, therefore there is no material contradiction between these two relevant piece of evidence. It is also not a matter of dispute that on the day of incident, accused persons were not found by the Investigating Officer and they had surrendered to the police on the 10th day of the incident and muddamal sticks were recovered from accused nos. 2

to 4. Without going into the merit of this part of evidence, the fact remains that P.W.1 Bhaniben has scene entire incident and scuffle between accused and her husband. She has seen all the accused giving blows on the body of her husband and as she was frightened, she ran away from the place of incident and went to the house of her daughter Savita. It is in evidence that she remained at the place of incident for a pretty long time. Submission of Mr. Kapoor, learned counsel appearing for the appellants-accused that this part of evidence should be considered as an infirmity, is not worth accepting. On the contrary, we feel that the conduct of P.W.1 Bhaniben is natural. She must have seen the body of the deceased in presence of her close relatives after assault and thereafter her conduct to approach police at the earliest, is a natural conduct. Considering the distance between village Andhar-Kachala and Zagadia, FIR lodged at about 12.00 mid-night or immediately thereafter, can be said to be a complaint filed immediately and, therefore, the submission that FIR is delayed FIR is not acceptable. It is in evidence that, the learned Trial Judge has considered this part also, P.W.1 Bhaniben remained in police station practically for whole night and she returned to the village with Investigating Officer. She was present when Inquest Panchanama was drawn in the presence of panchas. Looking to the age of the deceased and P.W.1 Bhaniben wife of the deceased, the behavior reflected from the evidence on record cannot be said to be unnatural and her evidence should not be discarded on the alleged infirmity brought to the notice of this court. We have gone through the reasons recorded by the learned trial Judge while appreciating evidence of P.W.1 Bhaniben and learned Judge has rightly held that minor discrepancies should be ignored when evidence of a rustic villager is under appreciation. Learned trial Judge has also considered the point of non-examination of an independent witness by the prosecution and has rightly held that the ratio propounded by this Court in the case of State of Gujarat v/s Bharwad Jakshi Nagji, reported in 1989(2) GLH 163, is applicable to the facts of this case. Learned trial Judge has referred relevant part of the said decision in his judgment. Evidence of Narmadaben also corroborates the version of P.W.1 Bhaniben materially. We agree that there is some contradiction as to the place of meeting with Bhaniben, but this contradiction cannot be said to be a material contradiction. Narmadaben is a close relative of deceased and P.W. 1 Bhaniben, but during night hours when a woman sees murder of her own husband, obviously, such woman normally would rush to her close relatives and especially to a woman of her family. In such

contingency, evidence of Narmadaben should not be brushed aside merely because there is one minor contradiction and the fact that she is one of the relatives of P.W.1 Bhaniben as well as of deceased Ishwarbhai. We agree that when there is a case of solitary eye-witness, by way of prudence, Court should try to seek corroboration and uncorroborated evidence of sole witness should not be accepted as a gospel truth. However in this case, oral version of P.W.1 Bhaniben is corroborated by the medical evidence. She has narrated the nature of injuries inflicted on the body of her deceased husband in the examination-in-chief as well as in FIR and this part of her version has been corroborated by the medical evidence led by the prosecution. She has stated that an axe blow was given to her husband on his head and she has identified the weapon which was sent to Forensic Science Laboratory (FSL for short) for examination and FSL has confirmed that there was blood on the axe. Blood found on the axe is a human blood and is of "A" group. Clothes recovered from the body of the deceased by the Investigating Officer also were found with blood of the same group. So, we are not inclined to accept that this is a case of uncorroborated testimony of a sole eye-witness. For the very reasons, we are of the view that decision in the case of Laxmanbhai Lakhabhai Baria (supra) relied on by the learned counsel appearing for the appellants-accused, would not be applicable to the facts of the present case. According to us, decision relied upon is based on typical set of facts of that case and the same does not propound ratio that each case of solitary eye-witness where such an eye-witness is wife of deceased, should not be accepted by the Court without corroboration. Learned trial Judge has considered all legal aspects agitated before him during the course of arguments and before reaching to a conclusion, has considered all the legal contentions raised before him. Learned Judge has rightly held that witness Bhaniben stood to test of cross-examination and has successfully narrated the occurrence of incident occurred in her presence. Learned Judge has also appreciated the fact that she did not raise any shout and has also held that she might have behaved in this manner under the fear or shock and only on that ground, her evidence should not be termed as an unnatural evidence. In nutshell, though the case of the prosecution is based on sole evidence of an eye-witness, learned Judge has rightly convicted all the four appellants-accused for the offence punishable under sec.302 R/w sec.114 of IPC. Learned Judge, before holding appellants accused guilty for the offence punishable under sec.114 of IPC, has appreciated nature of injuries and number of injuries found on the body of

the deceased and has rightly concluded that this case would fall under Clause : 3rdly of sec.300 of IPC. Learned trial Judge has also considered nature of external injuries and resultant internal injuries found on the body of the deceased for holding them guilty for the offences for which they are convicted. We are in full agreement with the reasonings given,findings arrived at and conclusions reached by the learned trial Judge for convicting the appellants-accused and sentencing them as aforesaid, on proper appreciation of oral as well as documentary evidence and we see no reason to interfere with the findings arrived at by the learned trial Judge. Since, order of acquittal is not challenged before us, there is no scope to discuss that part.

8. Only five witnesses including Investigating Officer are examined before the trial Court. As discussed, one of them is the Medical Officer who performed post mortem. We agree that the prosecution could have examined Savitaben as a supporting witness, but when P.W.3 Narmadaben is examined vide exh.21, non-examination of Savitaben would not create any shadow of doubt. Savitaben was not an eye-witness and she as well as P.W.3 Narmadaben are, practically, on same footing. Therefore, we are not inclined to accept this part of submission advanced by learned Advocate Mr. I.M. Kapoor. P.W.4 Ashokbhai Bhanubhai (exh.22) has supported the case of the prosecution and has stated specifically that original accused nos. 2 to 4 surrendered before the police and all of them produced muddamal sticks in his presence before the Investigating Officer. This witness has proved recovery panchanama exh.27. Non-availability of accused persons for 10 days in the village is a circumstance which should have been explained by the accused persons. It is in evidence that the Investigating Officer had tried to arrest the accused person till the day on which they surrendered to the police. So, this conduct on the part of the accused being relevant, is considered by the trial Court for holding them guilty. Evidence identifying weapon led by the prosecution if not assailed specifically during the cross-examination of the witness examined for the purpose, requires serious consideration and the trial Court has rightly done that.

9. For the reasons aforesaid, we see no merit in this appeal and hence appeal is dismissed. The impugned judgment dated 4.8.1990 of the learned Addl.Sessions Judge, Bharuch in Sessions Case No. 8/90 convicting the appellants-accused for the offence punishable under sec.302 R/w sec.114 of the IPC and sentencing each of the accused to suffer R/I for Life, is hereby confirmed.

25.7.2000 [K.R. VYAS, J]

[C.K. BUCH, J]

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